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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CARMENATE BAYRON,

10 Petitioner,

11 v.

12 ICE FIELD OFFICE DIRECTOR,

13 Respondent.

Case No. C17-1230-RAJ-MAT

REPORT AND RECOMMENDATION

14 Petitioner, who is currently detained at the Northwest Detention Center in Tacoma,
15 Washington, bring this 28 U.S.C. § 2241 immigration habeas action to obtain release from
16 immigration detention or a new bond hearing. (Dkt. 5.) The Government has moved to dismiss
17 (Dkt. 8), and in lieu of filing a response, petitioner filed an “Informative Memorandum and Motion
18 for Custody Redetermination” (Dkt. 11). The government responded to that motion. (Dkt. 12.)
19 Having considered the parties’ submissions, the balance of the record, and the governing law, the
20 Court recommends that the Government’s motion to dismiss be GRANTED, petitioner’s motion
21 for custody redetermination and habeas petition be DENIED, and this action be DISMISSED with
22 prejudice.
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1 I. BACKGROUND

2 Petitioner, a native and citizen of Guatemala, became a lawful permanent resident of the
3 United States in 2003. (Dkt. 9-1.) In November 2002 and September 2003, he was convicted in
4 Iowa of criminal mischief in the third degree and marijuana possession, respectively. (Dkts. 9-2
5 & 9-3.) In September 2004, he was convicted in Nevada of transporting methamphetamines, a
6 felony. (Dkt. 9-1 at 4; Dkt. 9-5 at 9.) His sentence was suspended, and he was released on
7 probation. (Dkt. 9-6 at 2-3.) Petitioner violated his probation numerous times and ultimately
8 stopped reporting. (*Id.*; Dkt. 9-8 at 6-7.)

9 In July 2015, petitioner was involved in a car accident in Iowa and later convicted of
10 driving under the influence. (Dkt. 9-7 at 4.) He was then extradited to Nevada, where the Nevada
11 court revoked his probation and imposed a 12-24 month sentence stemming from his 2004
12 conviction. (*Id.*; Dkt. 9-6 at 2-3.)

13 On August 10, 2016, the Department of Homeland Security (“DHS”) took custody of
14 petitioner in Nevada pursuant to a warrant. (Dkt. 9-9.) The same day, DHS issued a Notice to
15 Appear, charging petitioner as removable under 8 U.S.C. § 1227(a)(2)(B)(i) based on his 2004
16 conviction. (Dkt. 9-4.) On October 20, 2016, an immigration judge (“IJ”) ordered him removed
17 to Guatemala. (Dkt. 9-10.) Petitioner appealed to the Board of Immigration Appeals (“BIA”),
18 which dismissed the appeal. (Dkt. 9-11.) Petitioner filed a petition for review in the Ninth Circuit
19 Court of Appeals, which stayed his removal. (Dkt. 9-14.) On October 26, 2017, the Ninth Circuit
20 denied his petition for review. *Carmenate-Palencia v. Sessions*, No. 17-70677, Dkt. 14 (9th Cir.
21 Oct. 26, 2017). On November 16, 2017, the Ninth Circuit lifted the temporary stay of removal.
22 *Id.* at Dkt. 16.

1 On August 2, 2017, while his petition for review was pending, petitioner had a bond
2 hearing. (Dkts. 9-2 & 9-15.) The IJ received evidence from petitioner and the Government, heard
3 oral argument from both sides, and ultimately concluded that the Government sustained its burden
4 of presenting clear and convincing evidence that petitioner posed a flight risk. (See Dkts. 9-5 &
5 9-16.) Petitioner appealed this decision to the BIA (Dkt. 9-17), which has not yet ruled.

6 II. DISCUSSION

7 At the time petitioner initiated this action, he was detained under 8 U.S.C. § 1226(a).¹ See
8 *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 947 (9th Cir. 2008) (§ 1226(a) governs
9 the detention non-citizens who have been ordered removed and whose removal has been judicially
10 stayed pending ruling on a petition for review). Section 1226 provides the framework for the
11 arrest, detention, and release of non-citizens who are in removal proceedings. It grants DHS the
12 discretionary authority to determine whether a non-citizen should be detained, released on bond,
13 or released on conditional parole pending the completion of removal proceedings. 8 U.S.C. §
14 1226.

15 However, when the Ninth Circuit denied the petition for review and terminated the stay of
16 removal, the authority for petitioner's detention shifted to 8 U.S.C. § 1231(a). See *Casas-*
17 *Castrillon*, 535 F.3d at 947. Section 1231 governs the detention and release of non-citizens who
18 have been ordered removed. Under § 1231(a), DHS is required to detain a non-citizen during the
19 "removal period." 8 U.S.C. § 1231(a)(2). The removal period is the 90-day period that is triggered
20 by, *inter alia*, the Ninth Circuit's denial of a petition for review and termination of a stay of
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22 ¹ Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L.
23 No. 107-296 § 471, 116 Stat. 2135 (2002), transferred most immigration law enforcement functions from the
Department of Justice ("DOJ") to DHS, while the DOJ's Executive Office for Immigration Review retained its role
in administering immigration courts and the Board of Immigration Appeals. See *Hernandez v. Ashcroft*, 345 F.3d
824, 828 n.2 (9th Cir. 2003).

1 removal. 8 U.S.C. § 1231(a)(1)(B); *Casas-Castrillon*, 535 F.3d at 947. In this case, the removal
2 period began on November 16, 2017, when the stay of removal was lifted, and will not expire or
3 at least 90 days, or until February 14, 2018, at the earliest. Accordingly, petitioner's current
4 detention is mandatory and his request for release or a new bond hearing must be denied.

5 III. CONCLUSION

6 The Court recommends that the Government's motion to dismiss (Dkt. 8) be GRANTED,
7 petitioner's motion for a custody redetermination (Dkt. 11) be DENIED, petitioner's habeas
8 petition (Dkt. 5) be DENIED, and this action be DISMISSED with prejudice. A proposed order
9 accompanies this Report and Recommendation.

10 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
11 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
12 and Recommendation is signed. Failure to file objections within the specified time may affect
13 your right to appeal. Objections should be noted for consideration on the District Judge's motions
14 calendar for the third Friday after they are filed. Responses to objections may be filed within
15 **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be
16 ready for consideration by the District Judge on **December 22, 2017**.

17 Dated this 29th day of November, 2017.

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20 Mary Alice Theiler
21 United States Magistrate Judge
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